

Only persons who have actually paid taxes to the Department can file claims for credit. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

March 7, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 2, 2002 that we received on January 16, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

WE HAVE A CUSTOMER NAME COMPANY. THEY ARE CLAIMING THE CARPET THAT THEY ORDER FROM US WAS USED BY BUSINESS. WHEN THEY (COMPANY) PAY THE INVOICE THE SALES TAX WAS DEDUCTED. MY QUESTION IS, CAN COMPANY USED THEIR CUSTOMER (BUSINESS) EXEMPTION CERTIFICATE TO BE EXEMPT FROM ILLINOIS SALES TAX? CAN WE ISSUE A CREDIT FOR THE SAID TRANSACTION? BECAUSE TAXPAYER ALREADY PAY THE SALES TAX TO THE STATE. ATTACHED IS A COPY OF INVOICE AND EXEMPTION CERTIFICATE FROM BUSINESS. PLEASE ANSWER ME IN WRITING IF COMPANY CAN USED THEIR CUSTOMER EXEMPTION.

HOPING FOR YOUR IMMEDIATE ATTENTION ON THIS MATTER.

The "exemption certificate" you appended to your letter is a photocopy of a letter the Illinois Department of Revenue issued to BUSINESS informing it that it was being issued tax exemption identification number ### on the basis of being an exclusively charitable organization. Organizations that qualify as exclusively religious, charitable, or educational or as a governmental body can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers ("E" numbers). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940. When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real

estate in finished form, the tax base is what such construction contractor pays for the item. When contractors buy building materials they will incorporate into real estate from suppliers not registered to collect Illinois tax, the contractors must self-assess the Use Tax and pay it directly to this Department.

However, contractors who physically incorporate tangible personal property into real estate owned by exempt organizations that hold tax exempt "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

After the entity has provided their "E" number the contractor must provide their suppliers with the exemption identification number of the exempt organization that owns the property. In addition, they must provide their suppliers with certifications explaining they are making improvements to realty owned by the exempt organization by name and address of the realty being improved, and including the date the contract was executed.

Section 130.2075(d)(4) states that:

"A supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his **purchases are for conversion into real estate** under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is acting. (emphasis added)"

Please be advised that the words "purchases are for conversion into real estate" mean purchases of tangible personal property by a construction contractor who will affix such property to a building structure so that it is permanently incorporated into that structure as an integral part thereof. Normal examples of qualifying building materials are lumber, steel beams, bricks and roof shingles. Other items that can be permanently installed into a building structure include windows, insulation, doors, plumbing systems, water heaters, pipes, sinks and faucets. See 86 Ill. Adm. Code 130.1940, enclosed.

For further information about when carpeting is permanently affixed as real estate, see Section 130.1940(c)(1). As explained in the regulation, permanent affixation of floor coverings includes those installed by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack down strips"). However, permanent affixation does not include floor coverings that are area rugs or that are attached to the structure using only two-sided tape. Please be informed the Department is presently engaged in promulgating a new regulation about the tax liabilities that may be incurred by sellers of floor coverings. This is new Section 130.2101 and was published at 26 Ill. Reg. 1125, Issue #5. The text of this proposed regulation is also available on the Department's website.

Sales of tangible personal property to construction contractors, whether the prime contractor, construction superintendent, or subcontractor, who will resell such property in the form of tangible personal property (i.e. not permanently affixed to the building) are non-taxable sales for resale. Sales for resale to construction contractors must be properly documented. See 86 Ill. Adm. Code 130.1405. The subsequent sales by the contractor are taxable. See Sections 130.2075(a)(4) and 130.1940(b). Sales of tangible personal property by a construction contractor to a hospital who holds a valid tax

exemption identification number can be made tax free by the contractor upon presentation of that number by the hospital.

We are enclosing a copy of 86 Ill. Adm. Code 130.1501 concerning Claims for Credit. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. The repayment of the tax to the customer will satisfy the requirement of Section 130.1501(a)(2).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.